IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1698 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHAGANLAL BHIKHUBHAI ROHIT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1698 of 2002

MR HARSHAD J SHAH for Petitioner No. 1-2

MR. V.M.PANCHOLI, APP for Respondent No. 1

UNSERVED-REFUSED (N) for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 02/07/2004

ORAL JUDGEMENT

By filing instant petition under Section 482 of the Code of Criminal Procedure ('the Code' for short) petitioners and their son Hirenbhai Chhaganlal Rohit against whom Criminal Case has been filed by the Daughter-in-law Prabhavatiben Hirenhbhai who is respondent No.2 herein in the Court of learned JMFC, Olpad for commission of the alleged offences punishable under Sections 498(A), 504, 506(2) and 114 of the IPC which was sent for police investigation to Olpad Police Station under Section 156(3) of the Code and registered in the said police station as M Case No. 7 of 2001, have prayed to quash and set aside the criminal case and consequential order of sending the same to Olpad Police Station for investigation, on the grounds stated in the petition.

2. As per the averments made in the complaint respondent No.2/original complainant alleged that the petitioners herein and their son Hirenbhai Chhaganlal Rohit, the husband of the complainant have committed offences punishable under Sections 498(A), 504, 506(1) and 114 of the IPC. It is alleged therein that her marriage with Hirenbhai Chhaganlal Rohit was performed on or about 7.3.2000 at Kathor and after marriage they were residing at Bardoli together with the present petitioners. It is also alleged that Hirenbhai Chhaganlal Rohit had made a demand of Esteem Car. The financial condition of the parents of the complainant was not such that her parents could satisfy the said demand. However, the said demand was repeated by the present petitioners. The petitioners and their son Hirenbhai Chhaganlal Rohit tortured her and thereby showed physical and mental cruelty towards her and that is how they have committed offences as alleged. It is also alleged that the complainant was also beaten by her husband and, therefore, she filed a criminal complaint in the Court of learned JMFC, Olpad which was sent for investigation under Section 156 (3) of the Code.

3. Olpad Police Station registered an FIR as M-Case No.7 of 2001 and started investigation. During the course of investigation evidence was divulged against the petitioners as well as son of the petitioners named Hirenbhai Chhaganlal Rohit for commission of the alleged offences as mentioned in the complaint. Therefore, Olpad Police Station filed charge sheet in the Court of learned JMFC, Olpad against Hirenbhai Chhaganlal Rohit who happens to be the husband of the complainant whereas present petitioners were shown as absconder as at the time of filing of the charge sheet they were in USA. So far as charge sheet filed in the Court of learned JMFC,

Olpad against Hirenbhai Chhaganlal Rohit is concerned, same is registered as Criminal Case No. 2572 of 2002. Hirenbhai Chhaganlal Rohit pleaded not guilty to the charge, therefore, he was put on trial for commission of the offences as alleged.

4. It may be noted that during the course of investigation, complainant, wife of Hirenbhai Chhaganlal Rohit did not support the prosecution case and she unequivocally stated before the learned Magistrate that incident as alleged in the complaint had never taken place. She stated that she was forced to lodge complaint a result of pressure tactics adopted by her father. Therefore, at the conclusion of trial, as there was no evidence against Hirenbhai Chhaganlal Rohit, learned Magistrate, vide order dated 30.3.2002, acquitted Hirenbhai Chhaganlal Rohit of the offences with which he was charged.

5. Now, by filing this petition, petitioners who are the father-in-law and mother-in-law of the complainant averred that at the relevant time they were not residing in India and they were in USA and therefore, there was no evidence worth the name against them for commission of the alleged offences as alleged in the complaint made by the complainant. It is also asserted by them that the main allegation was against their son, who is the husband of the complainant. However, during the course of the trial, complainant did not support the averments made in the complaint and therefore, learned JMFC has rightly acquitted their son, i.e. Hirenbhai Chhaganlal Rohit who is the husband of the complainant and therefore, there is no evidence against the present petitioners as well. They, therefore, prayed for the relief to which the reference is made earlier. In support of their prayer they have annexed the copy of the charge sheet filed against Hirenbhai Chhaganlal Rohit, judgement and order passed by the learned JMFC, Olpad in Criminal Case No. 2572 of 2002 acquitting Hirenbhai Chhaganlal Rohit of the offences with which he was charged.

6. I have considered the submissions advanced by learned advocates appearing for the parties. I have also perused the averments made in the petition as well as original complaint Annexure-A to the petition and other annexures annexed with the petition.

7. It is not in dispute that marriage of the complainant was solemnized with Hirenbhai Chhaganlal Rohit, son of the present petitioners on 7.3.2000 at Kathor village and thereafter they resided together at

Bardoli. As per the allegations made in the complaint, Hirenbhai Chhaganlal Rohit demanded Esteem Car but due to financial constrain of the complainant's parents, the demand could not be satisfied and therefore, as per the averments made in the complaint, Hirenbhai and his parents started harassing the complainant by giving torture, therefore, complainant was subjected to mental and physical cruelty at the hands of her husband and the present petitioners.

8. It is also not in dispute that the complainant filed criminal complaint in the court of learned JMFC, Olpad which was sent for investigation under Section 156(3) of the Code. During the course of investigation, evidence was divulged against petitioners as well as Hirenbhai Chhaganlal Rohit. Police filed charge sheet against Hirenbhai Chhaganlal Rohit whereas present petitioners were shown as absconders, as, at the time of filing of the charge sheet, they were residing in USA.

9. It is interesting to note that during the course of trial, the complainant did not support the prosecution version. She has given total go-by to the version narrated in the complaint wherein she has inter alia unequivocally stated that because of pressure made by her parents she has lodged the complaint. She also stated that no incident as alleged in the complaint has ever taken place. She has also stated that the averments made in the complainant with respect to physical and mental cruelty meted out to her was false. The complaint was drafted by the Lawyer and the information was supplied by her father to the Lawyer. In view of the aforesaid evidence, learned JMFC acquitted Hirenbhai Chhaganlal Rohit of the offences with which he was charged. On further scrutiny of the said complaint and the oral evidence which was recorded during the course of trial, it is evident that the complainant has not whispered anything against the present petitioners and therefore according to this Court now no useful purpose will be served in allowing the officer of Olpad Police Station to file charge sheet against the petitioners. Therefore, according to this Court, the said investigation qua the present petitioners deserves to be quashed and set aside.

10. For the foregoing reasons, the complaint dated 25.9.2001 filed in the Court of learned JMFC, Olpad by the respondent No.2 original complainant which was sent for police investigation under Section 156(3) of the Code and registered in the said police station as M Case No. 7 of 2001 is hereby quashed and set aside qua the present petitioners and, resultantly, Olpad Police Station is

directed not to file charge sheet on the basis of the said complaint and not to take any action against the petitioners in connection with the said case. Rule is made absolute accordingly.

(A.M.Kapadia,J)

Jayanti*